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Attorneys for the Defendant
James Skahan-Lowe

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
The Honorable STANLEY A. BASTIAN

United States of America,

Plaintiff,

v.

James Skahan-Lowe,

Defendant.

No. 1:22-CR -2079-SAB

Objection to Presentence Investigation
Report

James Skahan-Lowe, through his attorney, Alex B. Hernandez, III, of the Federal Defenders of Eastern Washington and Idaho, submits these objections to the Presentence Investigation Report (“PSIR”). [ECF No. 25].

Objections

Mr. Skahan-Lowe has no objections to the guideline calculations in the PSIR. The guideline sentence is the term of imprisonment required by statute, which is 7 years under 18 U.S.C. § 924(c)(1)(A)(ii), and neither Chapter Three (Adjustments) or Four (Criminal History and Criminal Livelihood) apply. USSG § 2K2.4(b). *Id.* at ¶27.

1 However, Mr. Skahan-Lowe objects to the calculations of his criminal history points,
2 although ultimately, he will still be in Criminal History Category VI:

3 **1. Page 10-11, ¶¶ 69-77:** Mr. Skahan-Lowe objects to the 2 points assessed for his
4 conviction of First-Degree Possession of Stolen Property (Date of Offense – 6/24/2014;
5 Yakima Court Superior Court Cause No. 14-1-01107-1) and 2 points assessed for his
6 conviction of Second-Degree Burglary (Date of Offense – 7/9/2014; Yakima County
7 Superior Court Cause No. 14-1-01610-2). Even though these offenses occurred on separate
8 dates, Mr. Skahan-Lowe believes these two convictions should be treated as a single sentence
9 under USSG § 4A1.2(a)(2)(B) because there does not appear to have been an intervening
10 arrest and both matters were sentenced on the same day. From the PSIR, it appears Mr.
11 Skahan-Lowe was not immediately arrested when the offenses occurred. According to the
12 PSIR, he was arrested at later date on a warrant issued in the Possession of Stolen Vehicle
13 case and sentenced on both matters on the same date, which was May 12, 2015. The
14 sentences for these two convictions should be treated as a single sentence for a total of 2
15 points.
16

17 **2. Page 13-14, ¶¶ 90-98:** Mr. Skahan-Lowe objects to the 3 points assessed for his
18 conviction Second-Degree Burglary (Date of Offense – 6/16/2017; Yakima Court Superior
19 Court Cause No. 17-1-01310-8) and 3 points assessed for his conviction of Possession of
20 Stolen Vehicle (Date of Offense 6/25/2017; Yakima County Superior Court Cause No. 17-
21 1-01263-2). Even though these offenses occurred on separate dates, Mr. Skahan-Lowe
22 believes these two convictions should be treated as a single sentence under USSG §
23 4A1.2(a)(2)(B) because there does not appear to have been an intervening arrest and both
24

1 matters were sentenced on the same day. From the PSIR, it does not appear there was an
2 arrest made in the Second-Degree Burglary offense at the time of the incident. [ECF No. 25
3 at ¶93]. Nor was there an arrest on the Possession of Stolen Vehicle at the time of the
4 offense, instead, a warrant of arrest was requested. *Id.* at ¶98. At some point, Mr. Skahan-
5 Lowe was arrested for both offenses and was sentenced on both matters on the same date,
6 which was January 4, 2018. It does not appear there was an intervening arrest and the
7 sentences for these two convictions should be treated as a single sentence for a total of 3
8 points.

9
10 **3. Page 14, ¶¶s 101-106:** Mr. Skahan-Lowe objects to the 1 point assessed for his
11 conviction for Shoplifting (Date of Offense – 9/12/2019; Yakima Municipal Court Cause
12 No. PA19-2011) and 1 point assessed for his conviction for Shoplifting (Date of Offense
13 9/14/2019; Yakima Municipal Court Cause No. PA19-0209). Even though these offenses
14 occurred on separate dates, Mr. Skahan-Lowe believes these two convictions should be
15 treated as a single sentence under USSG § 4A1.2(a)(2)(B) because there does not appear to
16 have been an intervening arrest and both matters were sentenced on the same day. From
17 the PSIR, it does not appear there were any arrests made for these incidents when they
18 occurred. [ECF No. 25 at ¶93]. Instead, from the PSIR, it looks like he did not appear for a
19 hearing on both matters and a warrant was issued for both matters. At some point, Mr.
20 Skahan-Lowe was arrested for both offenses and was sentenced on both matters on the
21 same date, which was January 19, 2021. Accordingly, it does not appear there was an
22 intervening arrest and the sentences for these two convictions should be treated as a single
23 sentence for a total of 1 point.

1 **4. Pages 14-15, ¶¶ 107-116:** Mr. Skahan-Lowe objects to the 3 points assessed for his
2 conviction First-Degree Burglary (Date of Offense – 6/27/2021; Yakima Superior Court
3 Cause No. 21-1-01170-7) and 3 points assessed for his conviction of Possession of Stolen
4 Motor Vehicle (Date of Offense – 3-31-2022; Yakima Superior Court Cause No. 22-1-
5 00609-4). Even though these offenses occurred on separate dates, Mr. Skahan-Lowe
6 believes these two convictions should be treated as a single sentence under USSG §
7 4A1.2(a)(2)(B) because there does not appear to have been an intervening arrest and both
8 matters were sentenced on the same day. From the PSIR, it does not appear an arrest was
9 made for the First-Degree Burglary offense at the time of the incident. It is unclear if Mr.
10 Skahan-Lowe was arrested on this offense before his arrest on the Possession of Stolen
11 Motor Vehicle charge. *Id.* at ¶112. Since it appears there was no intervening arrest before
12 Mr. Skahan-Lowe's arrest in the Possession of Stolen Motor Vehicle and he was sentenced
13 on both matters on the same date, which was June 9, 2022, these two convictions should be
14 treated as a single sentence for a total of 3 points.

16 **5. Page 16 – Criminal History Computation:** Should the Court agree with Objections 1-
17 4, then criminal history score would be 17, resulting in a CHC of VI.

18 **6. Page 23, ¶179:** Mr. Skahan-Lowe objects to the recommendation of an upward
19 departure based on USSG § 4A1.3(a). As noted in the PSIR, neither Chapter 3 nor Chapter
20 4 apply when the offense is a violation of 18 U.S.C. § 924(c)(1)(A)(ii). [ECF No. 25 at ¶27].
21 Because § 4A1.3(a) does not apply, this guideline cannot be a basis for an upward departure.
22

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1 Dated: January 11, 2023.

2 Respectfully Submitted,

3 s/Alex B. Hernandez, III

4 Alex B. Hernandez, III, WA 21807

5 Attorneys for James Skahan-Lowe

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11 **CERTIFICATE OF SERVICE**

12 I certify that January 11, 2023, I electronically filed the foregoing with the Clerk of
13 the Court using the CM/ECF System which will send notification of such filing to:
14 Thomas J. Hanlon, Assistant United States Attorney and Carrie Valencia, United States
15 Probation Officer.

16 s/Alex B. Hernandez, III

17 Alex B. Hernandez, III, WA 21807

18 Attorneys for James Skahan-Lowe
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